

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FINANCE AND CLAIMS SUBCOMMITTEE ON DISTRICT COURT FUNDING

Call to Order: By **SEN. JOHN ESP**, on March 20, 2003 at 5:00 P.M.,
in Room 350 Capitol.

ROLL CALL

Members Present:

Sen. John Esp, Chairman (R)
Sen. Dan McGee, Vice-Chairman (R)
Sen. Edward Butcher (R)
Sen. Jeff Mangan (D)
Sen. Linda Nelson (D)
Sen. Jerry O'Neil (R)
Sen. Mike Wheat (D)

Members Excused: Sen. Joseph (Joe) Tropila (D)

Members Absent: None.

Staff Present: Prudence Gildroy, Committee Secretary
Lynn Zanto, Legislative Services
Valencia Lane, Legislative Services

Please Note:

Audio-only Committees: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 218, 2/11/2003

Discussion:

SEN. MIKE WHEAT, discussed the Gray Bill in detail.

EXHIBIT (fcs59b01) The Appellate Public Defender Commission becomes the Public Defender Commission. The commission shall meet at least two times a year. The Chief Public Defender shall act as secretary to the commission and attend all of the meetings. The commission is required to develop policies and procedures for identifying and addressing conflicts of interest and claims of

ineffective assistance of counsel. The reason is both the appellate and public defenders and under one roof. There will be times when ineffective assistance of counsel are raised by defendants. If there are legitimate claims, those cases will be contracted out to a lawyer outside the public defender system. The Chief Public Defender will hire and supervise the work of supporting personnel authorized by the commission including an administrative director to assist the Chief Public Defender in IT matters, personnel matters etc., outside of the courtroom and defending indigents. An annual report concerning the operation and administration of the public defender system will be submitted to the commission, the governor, the **Law and Justice Interim Committee** and the **Supreme Court**. The Administrative Director will prepare the budget requests. There is a public defender and indigent defense contingent expense account in the state special revenue fund if they overrun their budget. Public defenders and staff who are employed by a county on June 30, 2003 may be transferred to state employees as of July 1, 2004. Accumulated sick and vacation leave, years of service as well as accumulated compensatory time is the liability of the county. The county will provide office space for the public defenders until July 1, 2005. Property such as office equipment and computers will be retained by the county unless otherwise agreed by the county and the state. Sections 1,3,4,7 and 17 will become effective July 1, 2003 and all remaining sections will become effective on July 1, 2004.

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SEN. JEFF MANGAN advised they cannot have an official fiscal note or one drafted until the bill is amended in committee and action has been taken on it. He discussed some of the estimated costs if the amendments go through. In the first year, 2004, they would be looking at 3.5 FTE for the new public defender program at a cost of \$270,000. State assumption of public defenders as state employees would not occur until 2005. The cost would be around \$6.5M and that would include six FTE's in the Public Defender office under the **Department of Administration** and approximately 49 to 50 FTE's for the public defenders statewide. Operating costs, contracted costs for public defenders and all the other variable costs are included in the \$6.5M. The assumptions are the counties will be providing rent for the biennium and will assume the vacation, sick and comp liability. Once the bill is amended and actions are taken on it in the full committee, the **Office of Budget and Program Planning** will determine the cost of this program based on the bill. Early on, the subcommittee worked with the **Department of Revenue** to break down some of the more specific District Court expenses from the 2001 numbers from the counties and added the multipliers for yearly increases. They determined

there was approximately \$5.5M for indigent defense or public defender costs. He discussed section 13 and 17 of the bill. There were three sections of services that couldn't be put in any category and they weren't sure if they were indigent defense costs, probation costs or a remaining district court cost. Those areas were put in juvenile probation and remaining state costs as there was no clear way of breaking them out. There could be some indigent defense costs in those professional services and purchase services. In January and February they discussed how to deal with that part of money and that's when the contingency fund language was suggested by the **Office of Budget and Program Planning**. The contingency fund could be accessed by the judiciary and the public defenders office through the **Office of Budget and Program Planning**. The fund needs to be renamed. The cost is \$1.9M and none of that was included in the \$5.5M. He thought the **Office of Budget and Program Planning** would transfer \$5.5M from the Judiciary to the Public Defender program. This would leave approximately \$800,000 to \$1M to fund the program and some of it could be in the contingency fund.

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SEN. DAN MCGEE asked if the reason they were discussing the \$6.5M instead of \$5.5M was because they couldn't quantify the costs for professional services, purchase services and the psych lab physician.

SEN. MANGAN advised they were not convinced that all of the \$1.9M belonged under those areas, etc. The additional money could be in the contingency fund or the new cost of administering the program with the six FTE's and other costs related to Public Defender assumption.

SEN. MCGEE referred to page 14, section 17 where it discussed the fund transfer and he wondered if this was the contingency account.

SEN. MANGAN said that was correct and could be accessed by both the Judiciary and the Public Defender program.

SEN. MCGEE asked about page 8, section 7, and what happens to the commission.

SEN. WHEAT said the commission is there to oversee the whole thing and the Chief Public Defender is the secretary of the commission and will always be at the meetings. It made more sense to structure it like a business model with one person at the top as the decision maker but who would still answer to the

commission. Everyone under the Chief Public Defender answers to the Chief Public Defender.

{Tape: 1; Side: B}

CHAIRMAN ESP asked if they looked at it like a business model, wouldn't they want the business person on top and the skilled people under him.

SEN. WHEAT advised not necessarily and it may be more like a military model. They need someone who answers to the commission and carries out the policy decisions of the commission and that is the person who runs the show. The Administrative Director prepares the budget and oversees the information technology for the entire system and personnel so that the Chief Public Defender can concentrate on making sure indigent defense gets carried out effectively.

SEN. MCGEE agreed the Chief Public Defender needed to be the head of the department and the Administrative Officer under the Chief Public Defender.

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CHAIRMAN ESP referred to on page 12 and advised the name of the account and accessing the account would need to be clarified and he wondered if there would be an amendment.

SEN. WHEAT advised he would bring an amendment with the bill. He wanted the bill to be passed so it could go on to committee. The language would have to be changed if the Supreme Court will rely on the contingency fund as well as the public defender. He advised he would work with **Ms. Lane**.

CHAIRMAN ESP said on page 9 there is an annual report to the Governor, etc. and he wondered if there had been any thought to having this commission report quarterly or bi-annually to the **Law and Justice Interim Committee**.

SEN. WHEAT said he had not thought of that, but felt it was a good idea especially in the first couple of years. He felt it was important to know where the money is going and how it is being spent. He said an amendment could be prepared.

Valencia Lane, Legislative Services, asked if they wanted it to remain an annual report to all of the entities, but add that they must report quarterly or semi-annually to the **Law and Justice Interim Committee**.

CHAIRMAN ESP advised he would prefer that they report quarterly.

Ms. Lane asked if they still wanted to include the annual report to everyone.

SEN. WHEAT said yes and that they report quarterly at least during the first two years and after that as determined by the commission.

SEN. EDWARD BUTCHER asked if they would be tracking this in two years during the Legislative session with a special committee.

CHAIRMAN ESP said he envisioned the **Law and Justice Interim Committee** would report to the full Legislative body if there were problems.

SEN. MCGEE said they would report to the **Law and Justice Committee** until the session and then report to the legislature.

Ms. Lane suggested they could change page 9, lines 14-16, to require a bi-annual report to the Legislature and then put in a new section, which would not be codified, would require that there be quarterly reports to all of the entities during the 2005 biennium.

SEN. LINDA NELSON said they had some oversight on court assumption last interim and wondered if the Finance Committee would be involved.

Ms. Lane said section 7 would be codified as permanent law and they could require a bi-annual report to the Legislature. There could be another section of the Gray Bill which would not be codified and require that a quarterly report be made to the commission, Governor, Law and Justice Interim Committee, Supreme Court, etc., during the biennium. She said they could certainly add the Legislative Finance Committee.

SEN. NELSON thought it would be good for the financial end of it to be looked at by the Finance Committee.

SEN. WHEAT agreed.

SEN. MANGAN said it is his belief that the contingency fund would not be seen as revenue in this bill. He said they would see a fiscal note for that second year with a minimum hit of \$800,000 to the \$6.5M. The \$1.9M would not show up on any fiscal note as revenue.

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Motion: SEN. MCGEE moved TO RECOMMEND TO SENATE FINANCE AND CLAIMS, SB 218 AS AMENDED AND WHAT IS CALLED THE GRAY BILL.

Vote: Motion carried unanimously.

CHAIRMAN ESP said they need to discuss SB 134.

CHIEF JUSTICE KARLA GRAY, SUPREME COURT, said they put in a proposal earlier to this subcommittee that would have cost the General Fund about \$2.3M. This would be conditioned on the Judiciary taking no global amendment hits but would leave some fallback on the counties. The green sheet dated 3/11/2003 was a proposal that, except for sharing the accumulated sick and vacation leave, would have no fallback to the counties. She discussed a prepared summary of the Judiciary's proposal which she called the March 20 proposal. **EXHIBIT(fcs59b02)** She hoped they could create a gray bill from SB 134 and incorporate their proposal instead. She was looking for an efficient means to move forward in a timely way. **EXHIBIT(fcs59b03)** The proposal is conditioned on no global reduction to the branch. The House restored the one percent global reduction to the Judicial Branch.

Gordon Morris, MT Assoc. of Counties, thanked **SEN. WHEAT, SEN. MANGAN** and **Ms. Lane** and felt they should be applauded. He discussed and made suggestions for the effective dates on the Gray Bill. He thought the optional retention of property was excellent. He discussed the accruals and the liability of the counties. One of the suggestions that was made earlier was the counties could buy out the accrual. Those accruals would be costed out at 20 percent of actual. He suggested the counties who had accruals could give the state 20 percent calculated of what their accrual would be worth as of June 30, 2004. Cascade County, Missoula County, Lewis and Clark County and Yellowstone County are the only counties that would be impacted.

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Justice Gray advised she is still confused on who is going to pay the bills in fiscal year 2004.

SEN. WHEAT said it is not real clear yet and will depend on the cost to transfer it to the **Department of Administration**. It may be the court pays those and continues to reimburse through 2004. They need to find out the cost of the transfer.

Justice Gray asked if there would be some clarification at some point in the bill.

SEN. WHEAT advised yes.

Justice Gray read lines 26-27, page 3, and advised it is not clear if the commission "shall propose" minimum standards and it is up to the Supreme Court to "accept, reject or modify."

SEN. WHEAT agreed and he said he would make that change.

Peggy Beltrone, Cascade County Commissioner, said on page 13, subsection 4, if this is approved section 5 would not be applicable because they would be new employees. She proposed that county employees who become state employees should be able to access sick leave as soon as they become state employees and not be treated differently. She suggested their accrual at 25 percent for sick leave should be transferred to the state so that those employees are not treated as second class. She said they have no comp time accruals in Cascade County and she felt it would mean a lot to those employees to be able to access sick leave.

SEN. WHEAT said this is language that they have been struggling with to try and get a handle on what the cost was going to be for these transfers.

SEN. MANGAN advised they wanted discussion and ideas so it becomes a better bill.

Ann Mary Dussault, Chief Administrative Office for Missoula County, said they would be more than happy to help with any differences that they may have as the bill moves forward.

Harold Blattie, Montana Association of Counties, passed out a County Public Defender Narrative and discussed it.

EXHIBIT (fcs59b04)

ADJOURNMENT

Adjournment: 7:50 P.M.

SEN. JOHN ESP, Chairman

PRUDENCE GILDROY, Secretary

JE/PG

EXHIBIT (fcs59bad)